

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Greg Finch	Team: Squad #14	CCRB Case #: 201800578	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 01/03/2018 3:13 PM	Location of Incident: 173 Starr Street, 83rd Precinct stationhouse	Precinct: 83	18 Mo. SOL 7/3/2019	EO SOL 7/3/2019	
Date/Time CV Reported Sat, 01/20/2018 8:01 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 01/20/2018 8:01 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Kenneth Dwyer	23759	923793	083 PCT
2. LT Olvin Serrano	00000	939452	083 PCT
3. LSA David Poggioli	00000	939236	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Alexander Mignone	15350	956932	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LSA David Poggioli	Abuse: On January 3, 2018, at 173 Starr Street in Brooklyn, Lieutenant David Poggioli stopped § 87(2)(b)	
B.POM Kenneth Dwyer	Abuse: On January 3, 2018, at 173 Starr Street in Brooklyn, Police Officer Kenneth Dwyer searched § 87(2)(b)	
C.LT Olvin Serrano	Discourtesy: On January 3, 2018, at 173 Starr Street in Brooklyn, Lieutenant Olvin Serrano spoke discourteously to § 87(2)(b)	
D.LT Olvin Serrano	Abuse: On January 4, 2018, at the 83rd Precinct stationhouse in Brooklyn, Lieutenant Olvin Serrano refused to provide his name and/or shield number to § 87(2)(b)	

### Case Summary

On January 20, 2018, § 87(2)(b) filed this complaint via the CCRB's website.

On January 3, 2018, at approximately 3:13 p.m., § 87(2)(b) was walking eastbound on Starr Street in Brooklyn, when in front of 169 Starr Street, he was approached by Lieutenant David Poggioli and Police Officer Kenneth Dwyer of the 83<sup>rd</sup> Precinct. Lt. Poggioli stopped § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)) and PO Dwyer searched § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g)) and arrested him. Lieutenant Olvin Serrano of the 83<sup>rd</sup> Precinct arrived and allegedly said to § 87(2)(b) “You piece of shit, you should keep your word” (**Allegation C: Discourtesy**, § 87(2)(g)).

§ 87(2)(b) was arrested for § 87(2)(b).

§ 87(2)(b), § 86(1)(3)&(4), § 87(2)(c)

On January 4, 2018, at approximately 2:30 p.m., § 87(2)(b) who had since been released from police custody, returned to the 83<sup>rd</sup> Precinct stationhouse in Brooklyn, and Lieutenant Serrano allegedly refused to provide his name and shield number to him (**Allegation D: Abuse of Authority**, § 87(2)(g)).

§ 87(2)(b) captured part of this incident on cell phone video. The original footage can be found in IA#20 (Board Review 01) and the summary of the footage can be found in IA#39 (Board Review 13). A SnagIt copy has been placed below.

### Findings and Recommendations

**Allegation A — Abuse of Authority: On January 3, 2018, at 173 Starr Street in Brooklyn, Lieutenant David Poggioli stopped § 87(2)(b)**

**Allegation B — Abuse of Authority: On January 3, 2018, at 173 Starr Street in Brooklyn, Police Officer Kenneth Dwyer searched § 87(2)(b)**



2018-06-13\_16-31-13.mp4

The SnagIt clip depicts 15 seconds of the incident and captures § 87(2)(b) being stopped on the sidewalk, PO Dwyer searching § 87(2)(b) and Lt. Serrano approaching the scene.

§ 87(2)(b) (Board Review 02) said he exited 169 Starr Street after speaking with the building superintendent about renting a room and was walking westbound on the sidewalk when Lt. Poggioli and PO Dwyer approached him and PO Dwyer said, “I just want to talk.” [As the supervisor on scene, the stop allegation has solely been pled to Lt. Poggioli.] PO Dwyer placed his hand into § 87(2)(b)'s left inner sweater pocket. § 87(2)(b) asked PO Dwyer why he was being stopped, if he was being detained and said, “I don’t consent to be searched.” § 87(2)(b) said PO Dwyer removed two “empty heroin bags” from § 87(2)(b)'s pocket, though § 87(2)(b) denied possessing heroin during this incident. PO Dwyer and Lieutenant Poggioli handcuffed § 87(2)(b) and transported him to the 83<sup>rd</sup> Precinct stationhouse.

Lieutenant Poggioli (Board Review 03) said he was conducting a SNEU operation in the area when he received a phone call from two unidentified officers involved in the operation, who said they had observed a man with a bag of heroin in the lobby of 173 Starr Street. The officers provided a clothing description of the male suspect, but Lieutenant Poggioli did not remember the specific details of the description or any further details regarding their exact observations of § 87(2)(b)'s behavior at the time of his CCRB interview. Lieutenant Poggioli, Lieutenant Serrano and PO Dwyer arrived to the location, and observed § 87(2)(b) who matched the description provided by the observing officers. Lieutenant Poggioli said that at this point, based on § 87(2)(b)'s matching the description, the officers had probable cause to arrest him. PO Dwyer and

Lieutenant Poggioli exited their patrol car, approached § 87(2)(b) on the sidewalk, and PO Dwyer told § 87(2)(b) “You’re under arrest.” § 87(2)(b) argued and held his arms at his sides as PO Dwyer and Lt. Poggioli handcuffed him.

PO Dwyer’s and Lt. Serrano’s accounts of this incident were generally consistent with Lieutenant Poggioli’s account (Board Review 04; Board Review 05). Both officers said that § 87(2)(b) fit the provided description from the observation officers, which brought § 87(2)(b) to their attention, though neither could recall the specific details of the description at the time of their CCRB interviews. Lt. Serrano did not recall what action the observation officers alleged to have observed § 87(2)(b) do which prompted the stop. PO Dwyer acknowledged that after he and Lieutenant Poggioli approached § 87(2)(b) he placed his hand inside of § 87(2)(b)’s left inner sweater pocket and removed two empty glassine bags with heroin residue on them.

According to the Criminal Court Complaint and Supporting Deposition for Criminal Possession of a Controlled Substance (Board Review 13), as well as the Property Voucher for this arrest (Board Review 14), PO Dwyer recovered and vouchered two glassine envelopes containing heroin from § 87(2)(b) during this incident.

§ 87(2)(b) said he was at 173 Starr Street inquiring about renting a room, though the officers allege he had engaged in a drug transaction. Lt. Poggioli could not provide detailed information regarding the unidentified observation officers’ actual observations of § 87(2)(b). Additionally, neither Lt. Poggioli, PO Dwyer nor Lt. Serrano could recall the description of the suspect provided by the observation officers and the description is not documented in any NYPD paperwork. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation C — Discourtesy: On January 3, 2018, at 173 Starr Street in Brooklyn, Lieutenant Olvin Serrano spoke discourteously to § 87(2)(b)**

§ 87(2)(e), § 87(2)(f)

§ 87(2)(b) said that as PO Dwyer handcuffed him, Lieutenant Serrano told § 87(2)(b) “You piece of shit,” § 87(2)(e), § 87(2)(f)

§ 87(2)(b)

Lieutenant Serrano denied making the alleged statement and PO Dwyer and Lieutenant Poggioli denied hearing Lieutenant Serrano do so. § 87(2)(e), § 87(2)(f)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation D — Abuse of Authority: On January 4, 2018, at the 83rd Precinct stationhouse, Lieutenant Olvin Serrano refused to provide his name and/or shield number to § 87(2)(b)**

§ 87(2)(b) said that he was released from police custody on January 3, 2018, and that he returned to the 83<sup>rd</sup> Precinct stationhouse at approximately 2:30 p.m. on January 4, 2018, to dispute his arrest. In the stationhouse lobby, he encountered Lieutenant Serrano, who was walking through the lobby during tour change. § 87(2)(b) stood next to the gate in the waiting area between the stationhouse door and the closed door to the lobby, and as Lieutenant Serrano

walked through the lobby, § 87(2)(b) repeatedly demanded that Lieutenant Serrano provide his name and shield number to him. Lieutenant Serrano did not respond or acknowledge § 87(2)(b) at all, and continued walking through the lobby. § 87(2)(b) had already obtained Lieutenant Serrano's name from his nameplate during his arrest the day prior. When asked during his CCRB interview why he asked for information he already had, § 87(2)(b) said, "I don't know his rank and command, and it is my right with any public servant for them to identify themselves fully."

Lieutenant Serrano said that as he conducted Roll Call at the end of the stationhouse front desk, opposite the stationhouse front door, he saw § 87(2)(b) pointing at his cell phone and yelling unintelligibly across the lobby behind a closed glass door in the waiting area. § 87(2)(b) stood 50 yards from Lieutenant Serrano and Lieutenant Serrano could not hear anything § 87(2)(b) said. After a few minutes, § 87(2)(b) independently left the stationhouse.

PO Dwyer and Lieutenant Poggioli were not present for this interaction.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) has been a party to one CCRB complaint and has been named as a victim in six allegations:
  - § 87(2)(b)
- PO Dwyer has been a member-of-service for 18 years and has been a subject in five CCRB complaints and 11 allegations, of which four were substantiated:
  - Case #200716565 involved substantiated allegations of search of person, stop, and question against PO Dwyer. The Board recommended charges and the NYPD imposed Command Discipline B.
  - Case #200910968 involved a substantiated allegation of threat of force. The Board recommended charges and the NYPD imposed no discipline.
- Lieutenant Poggioli has been a member-of-service for 12 years and has been a subject in two CCRB complaints and 16 allegations, of which five were substantiated:
  - Case #201702421 involved five substantiated allegations of frisks. The Board recommended Command Discipline A and the NYPD has not yet imposed discipline.
- Lieutenant Serrano has been a member-of-service for 12 years and has been a subject in two CCRB complaints and five allegations, none of which were substantiated. § 87(2)(g)

**Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- On § 87(2)(b), § 87(2)(b) filed a Notice of Claim with the City of New York claiming false arrest, malicious prosecution, violation of his civil rights and emotional suffering and he is seeking \$200,000 as redress (Board Review 12). As of June 14, 2018, no 50H hearing had been scheduled.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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